



Reprinted  
April 10, 2003

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## ENGROSSED SENATE BILL No. 440

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DIGEST OF SB 440 (Updated April 9, 2003 1:19 PM - DI 52)

**Citations Affected:** IC 13-11; IC 13-17; IC 13-20; IC 13-21; IC 14-28; noncode.

**Synopsis:** Various environmental matters. Defines "emission data" for purposes of environmental management laws. Prohibits the air pollution control board (board) from adopting rules to require motor vehicle emissions testing in Clark and Floyd counties after December 31, 2006. Allows the budget agency to approve testing if necessary to avoid a loss of federal highway funding. Prohibits the board from establishing fees to be paid for testing. Adopts the National Flood Insurance Program regulations as the criteria for determining whether a person is allowed to construct a new residence in a floodway along the Ohio River. Specifies the lowest floor of a new residence constructed in a floodway must be at least two feet above the 100 year frequency flood elevation. Requires the board to adopt by November 1, 2004, new rules to address the matters contained in certain federal  
(Continued next page)

**Effective:** December 31, 2000 (retroactive); December 31, 2002 (retroactive); January 1, 2003 (retroactive); upon passage; July 1, 2003.

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### Gard, Hume

(HOUSE SPONSORS — BOTTORFF, WOLKINS)

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January 21, 2003, read first time and referred to Committee on Rules and Legislative Procedure.

January 27, 2003, amended; reassigned to Committee on Environmental Affairs.

February 25, 2003, amended, reported favorably — Do Pass.

March 3, 2003, read second time, amended, ordered engrossed.

March 4, 2003, engrossed. Read third time, passed. Yeas 48, nays 0.

#### HOUSE ACTION

March 13, 2003, read first time and referred to Committee on Environmental Affairs.

April 7, 2003, amended, reported — Do Pass.

April 9, 2003, read second time, amended, ordered engrossed.

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ES 440—LS 7879/DI 13+



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requirements concerning sources of air pollution, and requires the department of environmental management (IDEM) to report the status of the rulemaking to the environmental quality service council. Requires the maintenance and protection of outstanding state resource waters and exceptional use waters, and requires the water pollution control board to adopt certain rules concerning those waters. Limits sale and distribution of plastic bags that are not degradable. Suspends for five years the authority of IDEM to adopt a new rule or policy that requires certain industries to comply with standards of conduct that exceed federal standards. Extends the period during which a state agency or board may not enforce certain wetlands rules. Prohibits a solid waste management district from regulating conduct that is regulated by a state agency, except as expressly granted by statute.

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Reprinted  
April 10, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED SENATE BILL No. 440

A BILL FOR AN ACT to amend the Indiana Code concerning  
natural resources and environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 13-11-2-66.3 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: **Sec. 66.3.**  
4 **"Emission data", for purposes of environmental management laws,**  
5 **means:**  
6 (1) **the identity, amount, frequency, concentration, or other**  
7 **characteristics of a contaminant that:**  
8 (A) **has been emitted from an emission unit;**  
9 (B) **results from an emission by the emission unit;**  
10 (C) **the emission unit was authorized to emit under an**  
11 **applicable standard or limitation; or**  
12 (D) **is a combination of any of the items described in**  
13 **clauses (A) through (C);**  
14 (2) **the:**  
15 (A) **name, address, or other description of the location of;**  
16 **and**  
17 (B) **the nature of;**

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the emission unit necessary to identify the emission unit, including a description of the device, equipment, or operation that constitutes the emission unit; or

(3) information that is necessary to determine or calculate emission data described in subdivision (1), including:

(A) rate of operation;

(B) rate of production;

(C) rate of raw material usage; or

(D) material balance;

if the information is contained in a permit to ensure that the permit is enforceable under state or federal law.

SECTION 2. IC 13-11-2-130.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 130.5. "Periodic vehicle inspection program"**, for purposes of IC 13-17-5, means a program requiring a motor vehicle registered in a county to undergo a periodic test of emission characteristics and be repaired and retested if the motor vehicle fails the emissions test. The term includes entering into and managing contracts for inspection stations.

SECTION 3. IC 13-17-5-6.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 6.6. (a)** The board may not adopt a rule that establishes fees to be paid by persons having their motor vehicles tested under this chapter.

**(b)** This section expires January 1, 2007.

SECTION 4. IC 13-17-5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 9. (a)** After December 31, 2006, the board may not adopt a rule under air pollution control laws that requires motor vehicles to undergo a periodic test of emission characteristics in the following counties:

(1) A county having a population of more than seventy thousand (70,000) but less than seventy-one thousand (71,000).

(2) A county having a population of more than ninety thousand (90,000) but less than one hundred thousand (100,000).

**(b)** After December 31, 2006, 326 IAC 13-1.1 is void to the extent it applies to a county referred to in subsection (a).

**(c)** Unless the budget agency approves a periodic vehicle inspection program for a county referred to in subsection (a), the



board shall amend 326 IAC 13-1.1 so that it does not apply after December 31, 2006, to a county referred to in subsection (a).

(d) The budget agency, after review by the budget committee, may approve in writing the implementation of a periodic vehicle inspection program for one (1) or more counties described in subsection (a) only if the budget agency determines that the implementation of a periodic vehicle inspection program in the designated counties is necessary to avoid a loss of federal highway funding for the state or a political subdivision. The approval must specify the counties to which the periodic vehicle inspection program applies and the time during which the periodic vehicle inspection program must be conducted in each designated county. The budget agency, after review by the budget committee, shall withdraw an approval given under this subsection for a periodic vehicle inspection program in a county if the budget agency determines that the suspension of the periodic vehicle inspection program will not adversely affect federal highway funding for the state or a political subdivision.

SECTION 5. IC 13-20-24 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Chapter 24. Restrictions on Sale or Use of Nonbiodegradable plastic bags

Sec. 1. As used in this chapter, "degradable" has the meaning set forth at IC 5-22-5-6.

Sec. 2. As used in this chapter, "plastic" has the meaning set forth in IC 5-22-5-6.

Sec. 3. As used in this chapter, "retail merchant" has the meaning set forth at IC 6-2.5-4-1.

Sec. 4. After December 31, 2004, a retail merchant may not sell, offer for sale, give away, or otherwise distribute a plastic bag unless the plastic bag is degradable.

SECTION 6. IC 13-21-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) Except as provided in subsection (c) and section 14.5 of this chapter, the powers of a district do not include the following:

- (1) The power of eminent domain.
- (2) Except as provided in subsection (b), the power to exclusively control the collection or disposal of any solid waste or recyclables within the district by means that include the following:
  - (A) Franchising.
  - (B) Establishing a territory or territories within the district in which a person may provide service.



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(3) The power to establish the type of service that a person must provide for the collection or disposal of solid waste or recyclables within the district.

(4) The power to establish fees that a person must charge for the collection or disposal of solid waste or recyclables within the district.

**(5) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.**

(b) If one (1) or more of the governmental entities in a district, at the time of the formation of the district, is a party to a contract providing that the persons contracted with have the exclusive right to collect or dispose of solid waste within the jurisdiction of the governmental entity, the district may enter into an extension of that contract.

(c) Subsection (a) does not apply to activities conducted as part of a household hazardous waste collection and disposal project.

SECTION 7. IC 14-28-1-26.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 26.5. (a) This section applies to the following activities:

(1) The placement or replacement of a mobile home within a boundary river floodway.

(2) The repair of a residence that:

(A) is located in a boundary river floodway; and

(B) has been damaged by floodwaters or another means; except for the reconstruction of a residence to which section 25 of this chapter applies.

(3) The construction of an:

(A) addition to; or

(B) improvement of; a residential structure within a boundary river floodway.

**(4) The construction of a new residence within a boundary river floodway.**

(b) The federal regulations that:

(1) were adopted by the director of the Federal Emergency Management Agency to implement the National Flood Insurance Act (42 U.S.C. 4001 et seq.);

(2) are published in 44 CFR Parts 59 through 60; and

(3) are in effect on January 1, 1997;

are adopted as the criteria for determining whether an activity referred to in subsection (a) is allowed in Indiana. **However, the lowest floor of a new residence constructed within a boundary river floodway referred to in subsection (a)(4) must be at least two (2) feet above the one hundred (100) year frequency flood elevation.**

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(c) A person who wishes to perform an activity referred to in subsection (a) is authorized to perform the activity if:

(1) the federal regulations described in subsection (b) as the governing criteria allow the activity; and

(2) the person obtains a permit for the activity under this section.

(d) To obtain a permit for an activity referred to in subsection (a), a person must:

(1) file with the director a verified written application for a permit on a form provided by the department; and

(2) pay to the department a nonrefundable fee of ten dollars (\$10).

(e) An application filed under this section must:

(1) set forth the material facts concerning the proposed activity; and

(2) in the case of an activity described in subsection (a)(1), ~~or~~ (a)(3), **or (a)(4)**, include plans and specifications for the construction, reconstruction, or repair.

(f) If an application submitted under this section meets the requirements set forth in subsections (d) and (e), the director may not reject the application unless the regulations adopted as the governing criteria under subsection (b) do not allow the activity.

(g) If the federal regulations adopted as the governing criteria under subsection (b) authorize a type of activity only when certain conditions are met, a permit that the director issues for that type of activity may require the applicant, in carrying out the activity, to meet the same conditions.

(h) If:

(1) there is a dispute under this section about the elevation of a site; and

(2) the elevation of the site has been determined by a registered land surveyor;

the elevation determined by the registered land surveyor must be used as the accepted elevation.

SECTION 8. [EFFECTIVE UPON PASSAGE] The authority of the Indiana Department of Environmental Management to adopt a new rule or policy under IC 13-14-9 is suspended for a five (5) years to the extent that the new rule or policy requires an industry functioning under any of the following primary SIC codes:

(1) 3312 Blast furnaces and steel mills;

(2) 3321 Gray and ductile iron foundries;

(3) 3322 Malleable iron foundries;

(4) 3324 Steel investment foundries;

(5) 3325 Steel foundries;



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1 (6) 3365 Aluminum foundries;  
 2 (7) 3366 Copper foundries;  
 3 (8) 3369 Nonferrous foundries,  
 4 to comply with a standard of conduct that exceeds the standard  
 5 established in the related federal regulation or regulatory policy.

6 SECTION 9. [EFFECTIVE UPON PASSAGE] (a) **The air**  
 7 **pollution control board shall, as expeditiously as possible and**  
 8 **before November 1, 2004, adopt rules that address the matters**  
 9 **contained in:**

10 (1) 40 CFR 51.165; and  
 11 (2) 40 CFR 51.166;  
 12 as in effect March 3, 2003.

13 (b) **The department of environmental management shall present**  
 14 **reports to the environmental quality service council concerning the**  
 15 **status of the rulemaking required under this SECTION before:**

16 (1) December 1, 2003; and  
 17 (2) July 1, 2004.

18 (c) **This SECTION expires January 1, 2005.**

19 SECTION 10. P.L. 183-2002 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE UPON PASSAGE]: (a) The environmental  
 21 quality service council shall do the following:

22 (1) To the extent the following are involved in the implementation  
 23 of a rational wetland management policy, consider:

- 24 (A) Protection of surface and ground water quality.
- 25 (B) Control of location of accumulations of water.
- 26 (C) Water rights.
- 27 (D) Agricultural land use.
- 28 (E) Nonagricultural land use.
- 29 (F) Flood control.
- 30 (G) Natural habitat protection.
- 31 (H) Any other matter the council identifies.

32 (2) Recommend principles for addressing state or local  
 33 government management of and, with respect to state  
 34 management, state agency responsibility for:

- 35 (A) land areas with wetland characteristics; and
  - 36 (B) location and quantity of nonwetland surface water;
- 37 not under the jurisdiction of the federal Clean Water Act (33  
 38 U.S.C. 1341).

39 (3) Recommend a framework for overall state policy on wetlands  
 40 to implement the 1996 Indiana Wetland Conservation Plan with  
 41 goals, objectives, and responsibilities, including  
 42 recommendations on:

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- 1 (A) as a long term strategy, the types and functions of wetlands  
 2 that are valued in particular geographic areas; and  
 3 (B) the means for restoring, maintaining, and protecting  
 4 wetlands, including identification of agencies to be involved  
 5 and the incentives to be offered.
- 6 (4) Recommend the appropriate role and components of banking  
 7 programs as part of a mitigation rule to foster private initiatives  
 8 to restore wetlands in the context of a rational statewide wetland  
 9 strategy.
- 10 (5) Consider the options for statutory definition of "private pond"  
 11 and explain the implications of each option.
- 12 (6) Submit its final report on the matters referred to in  
 13 subdivisions (1) through (5) before November 1, 2002, to:  
 14 (A) the governor; and  
 15 (B) the executive director of the legislative services agency.
- 16 (b) The environmental quality service council shall consult with and  
 17 otherwise involve in its proceedings for consideration of the matters  
 18 listed in subsection (a):  
 19 (1) the director of the department of natural resources or the  
 20 director's designee; and  
 21 (2) representatives of all federal agencies involved in the  
 22 regulation of wetlands.
- 23 (c) A state agency or board may not:  
 24 (1) adopt or amend an administrative rule concerning the  
 25 definition of "wetlands" or "isolated wetlands"; or  
 26 (2) enforce an administrative rule promulgated after January 1,  
 27 2002, that concerns the definition of "wetlands" or "isolated  
 28 wetlands";
- 29 until the environmental quality service council has submitted its final  
 30 report under subsection (a)(6) or May 1, 2003, whichever occurs first.  
 31 **May 1, 2004.**
- 32 **SECTION 11. [EFFECTIVE JULY 1, 2003] (a) As used in this**  
 33 **SECTION, "board" refers to the water pollution control board**  
 34 **established by IC 13-18-1.**
- 35 **(b) All waters designated under 327 IAC 2-1.5-19(b) as**  
 36 **outstanding state resource waters shall be maintained and**  
 37 **protected in their present quality in accordance with the**  
 38 **antidegradation implementation procedures for the outstanding**  
 39 **state resource waters established by the board for waters in the**  
 40 **Great Lakes system. This SECTION does not affect the authority**  
 41 **of the board to amend 327 IAC 5-2-11.7. Any rule adopted by the**  
 42 **board contrary to this standard is void.**

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(c) All waters designated as outstanding state resource waters under 327 IAC 2-1-2(3) and waters designated as exceptional use waters under 327 IAC 2-1-6(i) shall be maintained and protected in accordance with 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2). If a permittee seeks a new or increased discharge for which a new or increased permit limit is required and that amounts to a significant lowering of water quality, the permittee shall demonstrate an overall improvement in water quality in the outstanding state resource water or exceptional use water, subject to:

(1) the approval of the department of environmental management; and

(2) IC 13-18-3-2(m)(2)(A) and IC 13-18-3-2(m)(2)(B).

(d) Any rule adopted by the board before the effective date of this SECTION is void to the extent that it:

(1) is inconsistent with this SECTION; or

(2) requires protection of waters beyond the protection required by 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2).

(e) Before July 1, 2005, the board shall amend 327 IAC 2-1-2, 327 IAC 2-1-6, and 327 IAC 2-1.5-4 to reflect this SECTION.

(f) This SECTION expires on the earlier of:

(1) the effective date of the rule amendments adopted by the board under subsection (e); or

(2) July 1, 2006.

SECTION 12. [EFFECTIVE JULY 1, 2003] (a) Until July 1, 2005, the following apply to a water body designated before October 1, 2002, as an exceptional use water:

(1) The water body is subject to the overall water quality improvement provisions of IC 13-18-3-2(l).

(2) The water body is not subject to a standard of having its water quality maintained and protected without degradation consistent with the provisions of P.L.140-2000.

(b) Before July 1, 2005, the water pollution control board established under IC 13-18-1 shall:

(1) determine whether, effective July 1, 2005, to designate as an outstanding state water each water designated before October 1, 2002, as an exceptional use water under 327 IAC 2-1-11; and

(2) complete rulemaking to make any designation determined under subdivision (1).

(c) This SECTION expires July 1, 2006.

SECTION 13. An emergency is declared for this act.



## COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 440, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Environmental Affairs.

(Reference is to SB 440 as introduced.)

GARTON, Chairperson

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 440, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning environmental law.

Page 1, line 3, delete "November 1, 2003" and insert "**March 1, 2004**".

Page 1, line 12, delete "on the earlier of:" and insert "**to the extent that it is inconsistent with the rules adopted under subsection (a) on the date on which the rules adopted under subsection (a) take effect.**

**(d) Nothing in this SECTION shall be construed as preventing the department of environmental management from receiving approval from the United States Environmental Protection Agency to administer the prevention of significant deterioration air permit program."**

Page 1, delete lines 13 through 17.

Page 2, delete lines 1 through 2.

and when so amended that said bill do pass.

(Reference is to SB 440 as printed January 28, 2003.)

GARD, Chairperson

Committee Vote: Yeas 6, Nays 3.

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SENATE MOTION

Mr. President: I move that Senator Hume be added as second author of Senate Bill 440.

GARD

SENATE MOTION

Mr. President: I move that Senate Bill 440 be amended to read as follows:

Page 1, line 3, delete "adopt rules that incorporate by reference" and insert: **"adopt:**

**(1) rules that incorporate by reference the definitions and requirements of:**

**(A) 40 CFR 51.165; and**

**(B) 40 CFR 51.166;**

**as in effect on March 3, 2003; and**

**(2) rules that establish significant net emission increase rates for pollutants as follows:**

**(A) Seven ten-thousandths (0.0007) of a ton per year for asbestos.**

**(B) Four ten-thousandths (0.0004) of a ton per year for beryllium.**

**(C) One-tenth (0.1) of a ton per year for mercury.**

**(D) One (1) ton per year for vinyl chloride.**

**(b) In the adoption of rules under subsection (a)(1), the board may establish a requirement that no proposed:**

**(1) major stationary source; or**

**(2) major modification of a stationary source:**

**may cause an emissions increase that will exceed eighty percent (80%) of the available growth increment allowed under the prevention of significant deterioration air permit program."**

Page 1, delete lines 4 through 7.

Page 1, line 8, delete "(b)" and insert "(c)".

Page 1, line 12, delete "(c)" and insert "(d)".

Page 1, line 15, delete "(d)" and insert "(e)".

Page 1, line 15, delete "shall" and insert **"may"**.

Page 2, line 3, delete "(e)" and insert **"(f)"**.

(Reference is to SB 440 as printed February 26, 2003.)

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 440, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning natural resources and environmental law.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-66.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: **Sec. 66.3. "Emission data", for purposes of environmental management laws, means:**

**(1) the identity, amount, frequency, concentration, or other characteristics of a contaminant that:**

**(A) has been emitted from an emission unit;**

**(B) results from an emission by the emission unit;**

**(C) the emission unit was authorized to emit under an applicable standard or limitation; or**

**(D) is a combination of any of the items described in clauses (A) through (C);**

**(2) the:**

**(A) name, address, or other description of the location of; and**

**(B) the nature of;**

**the emission unit necessary to identify the emission unit, including a description of the device, equipment, or operation that constitutes the emission unit; or**

**(3) information that is necessary to determine or calculate emission data described in subdivision (1), including:**

**(A) rate of operation;**

**(B) rate of production;**

**(C) rate of raw material usage; or**

**(D) material balance;**

**if the information is contained in a permit to ensure that the permit is enforceable under state or federal law.**

SECTION 2. IC 13-11-2-130.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 130.5. "Periodic vehicle inspection program", for purposes of IC 13-17-5, means a program**



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requiring a motor vehicle registered in a county to undergo a periodic test of emission characteristics and be repaired and retested if the motor vehicle fails the emissions test. The term includes entering into and managing contracts for inspection stations.

SECTION 3. IC 13-17-5-6.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6.6. (a) The board may not adopt a rule that establishes fees to be paid by persons having their motor vehicles tested under this chapter.

(b) This section expires January 1, 2007.

SECTION 4. IC 13-17-5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) After December 31, 2006, the board may not adopt a rule under air pollution control laws that requires motor vehicles to undergo a periodic test of emission characteristics in the following counties:

(1) A county having a population of more than seventy thousand (70,000) but less than seventy-one thousand (71,000).

(2) A county having a population of more than ninety thousand (90,000) but less than one hundred thousand (100,000).

(b) After December 31, 2006, 326 IAC 13-1.1 is void to the extent it applies to a county referred to in subsection (a).

(c) Unless the budget agency approves a periodic vehicle inspection program for a county referred to in subsection (a), the board shall amend 326 IAC 13-1.1 so that it does not apply after December 31, 2006, to a county referred to in subsection (a).

(d) The budget agency, after review by the budget committee, may approve in writing the implementation of a periodic vehicle inspection program for one (1) or more counties described in subsection (a) only if the budget agency determines that the implementation of a periodic vehicle inspection program in the designated counties is necessary to avoid a loss of federal highway funding for the state or a political subdivision. The approval must specify the counties to which the periodic vehicle inspection program applies and the time during which the periodic vehicle inspection program must be conducted in each designated county. The budget agency, after review by the budget committee, shall withdraw an approval given under this subsection for a periodic vehicle inspection program in a county if the budget agency



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**determines that the suspension of the periodic vehicle inspection program will not adversely affect federal highway funding for the state or a political subdivision.**

SECTION 5. IC 14-28-1-26.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 26.5. (a) This section applies to the following activities:

- (1) The placement or replacement of a mobile home within a boundary river floodway.
- (2) The repair of a residence that:
  - (A) is located in a boundary river floodway; and
  - (B) has been damaged by floodwaters or another means; except for the reconstruction of a residence to which section 25 of this chapter applies.
- (3) The construction of an:
  - (A) addition to; or
  - (B) improvement of;
 a residential structure within a boundary river floodway.
- (4) The construction of a new residence within a boundary river floodway.**

(b) The federal regulations that:

- (1) were adopted by the director of the Federal Emergency Management Agency to implement the National Flood Insurance Act (42 U.S.C. 4001 et seq.);
- (2) are published in 44 CFR Parts 59 through 60; and
- (3) are in effect on January 1, 1997;

are adopted as the criteria for determining whether an activity referred to in subsection (a) is allowed in Indiana. **However, the lowest floor of a new residence constructed within a boundary river floodway referred to in subsection (a)(4) must be at least two (2) feet above the one hundred (100) year frequency flood elevation.**

(c) A person who wishes to perform an activity referred to in subsection (a) is authorized to perform the activity if:

- (1) the federal regulations described in subsection (b) as the governing criteria allow the activity; and
- (2) the person obtains a permit for the activity under this section.

(d) To obtain a permit for an activity referred to in subsection (a), a person must:

- (1) file with the director a verified written application for a permit on a form provided by the department; and
- (2) pay to the department a nonrefundable fee of ten dollars (\$10).

(e) An application filed under this section must:

- (1) set forth the material facts concerning the proposed activity;

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and

(2) in the case of an activity described in subsection (a)(1), ~~or~~ (a)(3), **or (a)(4)**, include plans and specifications for the construction, reconstruction, or repair.

(f) If an application submitted under this section meets the requirements set forth in subsections (d) and (e), the director may not reject the application unless the regulations adopted as the governing criteria under subsection (b) do not allow the activity.

(g) If the federal regulations adopted as the governing criteria under subsection (b) authorize a type of activity only when certain conditions are met, a permit that the director issues for that type of activity may require the applicant, in carrying out the activity, to meet the same conditions.

(h) If:

(1) there is a dispute under this section about the elevation of a site; and

(2) the elevation of the site has been determined by a registered land surveyor;

the elevation determined by the registered land surveyor must be used as the accepted elevation."

Page 1, line 3, delete "March" and insert "**November**".

Page 1, line 11, delete "ten-thousandths (0.0007)" and insert "**thousandths (0.007)**".

Page 2, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 7. [EFFECTIVE DECEMBER 31, 2000 (RETROACTIVE)] **(a) As used in this SECTION, "board" refers to the water pollution control board established by IC 13-18-1.**

**(b) All waters designated under 327 IAC 2-1.5-19(b) as outstanding state resource waters shall be maintained and protected in their present quality in accordance with the antidegradation implementation procedures for the outstanding state resource waters established by the board for waters in the Great Lakes system. This SECTION does not affect the authority of the board to amend 327 IAC 5-2-11.7. Any rule adopted by the board contrary to this standard is void.**

**(c) All waters designated as outstanding state resource waters under 327 IAC 2-1-2(3) and waters designated as exceptional use waters under 327 IAC 2-1-6(i) shall be maintained and protected in accordance with 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2). If a permittee seeks a new or increased discharge for which a new or increased permit limit is required and that amounts to a significant lowering of water quality, the permittee shall demonstrate an**



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overall improvement in water quality in the outstanding state resource water or exceptional use water, subject to:

- (1) the approval of the department of environmental management; and
- (2) IC 13-18-3-2(m)(2)(A) and IC 13-18-3-2(m)(2)(B).
- (d) Any rule adopted by the board before the effective date of this SECTION is void to the extent that it:
  - (1) is inconsistent with this SECTION; or
  - (2) requires protection of waters beyond the protection required by 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2).
- (e) Before July 1, 2004, the board shall amend 327 IAC 2-1-2, 327 IAC 2-1-6, and 327 IAC 2-1.5-4 to reflect this SECTION.
- (f) This SECTION expires on the earlier of:
  - (1) the effective date of the rule amendments adopted by the board under subsection (e); or
  - (2) July 1, 2006.

SECTION 8. [EFFECTIVE DECEMBER 31, 2002 (RETROACTIVE)] (a) Until July 1, 2004, the following apply to a water body designated before October 1, 2002, as an exceptional use water:

- (1) The water body is subject to the overall water quality improvement provisions of IC 13-18-3-2(l).
- (2) The water body is not subject to a standard of having its water quality maintained and protected without degradation consistent with the provisions of P.L.140-2000.
- (b) Before July 1, 2004, the water pollution control board established under IC 13-18-1 shall:
  - (1) determine whether, effective July 1, 2004, to designate as an outstanding state water each water designated before October 1, 2002, as an exceptional use water under 327 IAC 2-1-11; and
  - (2) complete rulemaking to make any designation determined under subdivision (1).
- (c) This SECTION expires July 1, 2006."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 440 as reprinted March 4, 2003.)

BOTTORFF, Chair

Committee Vote: yeas 10, nays 3.

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## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 440 be amended to read as follows:

Page 3, between lines 18 and 19, begin a new paragraph and insert: "SECTION 5. IC 13-21-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) Except as provided in subsection (c) and section 14.5 of this chapter, the powers of a district do not include the following:

- (1) The power of eminent domain.
- (2) Except as provided in subsection (b), the power to exclusively control the collection or disposal of any solid waste or recyclables within the district by means that include the following:
  - (A) Franchising.
  - (B) Establishing a territory or territories within the district in which a person may provide service.
- (3) The power to establish the type of service that a person must provide for the collection or disposal of solid waste or recyclables within the district.
- (4) The power to establish fees that a person must charge for the collection or disposal of solid waste or recyclables within the district.
- (5) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.**

(b) If one (1) or more of the governmental entities in a district, at the time of the formation of the district, is a party to a contract providing that the persons contracted with have the exclusive right to collect or dispose of solid waste within the jurisdiction of the governmental entity, the district may enter into an extension of that contract.

(c) Subsection (a) does not apply to activities conducted as part of a household hazardous waste collection and disposal project."

Renumber all SECTIONS consecutively.

(Reference is to ESB 440 as printed April 7, 2003.)

BOTTORFF

## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 440 be amended to read as follows:

Page 4, line 38, delete ":" and insert "**rules that address the**

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matters contained in:

(1) 40 CFR 51.165; and

(2) 40 CFR 51.166;

as in effect March 3, 2003."

Page 4, delete lines 39 through 42.

Page 5, delete lines 1 through 28, begin a new paragraph and insert:

**"(b) The department of environmental management shall present reports to the environmental quality service council concerning the status of the rulemaking required under this SECTION before:**

**(1) December 1, 2003; and**

**(2) July 1, 2004."**

Page 5, line 29, delete "(f)" and insert "(c)".

Page 5, line 30, delete "DECEMBER 31, 2000".

Page 5, line 31, delete "(RETROACTIVE)]" and insert "JULY 1, 2003]".

Page 6, line 16, delete "2004," and insert "2005,".

Page 6, line 22, delete "DECEMBER 31, 2002".

Page 6, line 23, delete "(RETROACTIVE)]" and insert "JULY 1, 2003]".

Page 6, line 23, delete "2004," and insert "2005,".

Page 6, line 31, delete "2004," and insert "2005,".

Page 6, line 33, delete "2004," and insert "2005,".

(Reference is to ESB 440 as printed April 7, 2003.)

BOTTORFF

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# HOUSE MOTION

Mr. Speaker: I move that Senate Bill 440 be amended to read as follows:

Page 4, after line 35 , begin a new paragraph and insert: "[EFFECTIVE UPON PASSAGE] The authority of the Indiana Department of Environmental Management to adopt a new rule or policy under IC 13-14-9 is suspended for a five (5) years to the extent that the new rule or policy requires an industry functioning under any of the following primary SIC codes:

(1) 3312 Blast furnaces and steel mills;

(2) 3321 Gray and ductile iron foundries;

(3) 3322 Malleable iron foundries;

(4) 3324 Steel investment foundries;

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- (5) 3325 Steel foundries;
  - (6) 3365 Aluminum foundries;
  - (7) 3366 Copper foundries;
  - (8) 3369 Nonferrous foundries,
- to comply with a standard of conduct that exceeds the standard established in the related federal regulation or regulatory policy."

Renumber all SECTIONS consecutively.

(Reference is to ESB 440 as printed April 7, 2003.)

WOLKINS

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### HOUSE MOTION

Mr. Speaker: I move that Senate Bill 440 be amended to read as follows:

Page 5, after line 29 , begin a new paragraph and insert: "SECTION 7. P.L. 183-2002 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: (a) The environmental quality service council shall do the following:

- (1) To the extent the following are involved in the implementation of a rational wetland management policy, consider:
  - (A) Protection of surface and ground water quality.
  - (B) Control of location of accumulations of water.
  - (C) Water rights.
  - (D) Agricultural land use.
  - (E) Nonagricultural land use.
  - (F) Flood control.
  - (G) Natural habitat protection. "(H) Any other matter the council identifies.
- (2) Recommend principles for addressing state or local government management of and, with respect to state management, state agency responsibility for:
  - (A) land areas with wetland characteristics; and
  - (B) location and quantity of nonwetland surface water; not under the jurisdiction of the federal Clean Water Act (33 U.S.C. 1341).
- (3) Recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland Conservation Plan with goals, objectives, and responsibilities, including recommendations on:
  - (A) as a long term strategy, the types and functions of wetlands that are valued in particular geographic areas; and

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(B) the means for restoring, maintaining, and protecting wetlands, including identification of agencies to be involved and the incentives to be offered.

(4) Recommend the appropriate role and components of banking programs as part of a mitigation rule to foster private initiatives to restore wetlands in the context of a rational statewide wetland strategy.

(5) Consider the options for statutory definition of 'private pond' and explain the implications of each option.

(6) Submit its final report on the matters referred to in subdivisions (1) through (5) before November 1, 2002, to:

(A) the governor; and

(B) the executive director of the legislative services agency.

(b) The environmental quality service council shall consult with and otherwise involve in its proceedings for consideration of the matters listed in subsection (a):

(1) the director of the department of natural resources or the director's designee; and

(2) representatives of all federal agencies involved in the regulation of wetlands.

(c) A state agency or board may not:

(1) adopt or amend an administrative rule concerning the definition of 'wetlands' or 'isolated wetlands'; or

(2) enforce an administrative rule promulgated after January 1, 2002, that concerns the definition of 'wetlands' or 'isolated wetlands';

until the environmental quality service council has submitted its final report under subsection (a)(6) or May 1, 2003, whichever occurs first. **May 1, 2004."**

Renumber all SECTIONS consecutively.

(Reference is to ESB 440 as printed April 7, 2003.)

WOLKINS

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## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 440 be amended to read as follows:

Page 3, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 5. IC 13-20-24 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Chapter 24. Restrictions on Sale or Use of Nonbiodegradable plastic bags.**

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**Sec. 1. As used in this chapter, "degradable" has the meaning set forth at IC 5-22-5-6.**

**Sec. 2. As used in this chapter, "plastic" has the meaning set forth in IC 5-22-5-6.**

**Sec. 3. As used in this chapter, "retail merchant" has the meaning set forth at IC 6-2.5-4-1.**

**Sec. 4. After December 31, 2004, a retail merchant may not sell, offer for sale, give away, or otherwise distribute a plastic bag unless the plastic bag is degradable."**

Renumber all SECTIONS consecutively.

(Reference is to SB 440 as printed April 7, 2003.)

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